No. 22118-A

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANGELUS FUNERAL HOME,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ON PETITION FOR REVIEW OF THE DECISION OF
THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

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OPINION BELOW

The findings of fact and opinion of the Tax Court (I-R. 28-45) are officially reported at 47 T.C. 391.

JURISDICTION

This petition for review (I-R. 52-57) involves federal income tax for the taxable year 1961. On June 2, 1964, the Commissioner of Internal Revenue mailed to taxpayer a notice of asserted deficiency in income tax which included the amount of $10,852.00 for

the taxable year ending December 31, 1961. (I-R. 7-12, 16-22.) Within ninety days thereafter, on August 31, 1964, taxpayer filed a petition with the Tax Court for a redetermination of the deficiency under the provisions of Section 6213 of the Internal Revenue Code of 1954. (I-R. 1-12.) The Tax Court filed its findings of fact and opinion (I-R. 28-45) on January 17, 1967, and a decision was entered on March 8, 1967 (I-R. 51). The case is brought to this Court by a petition for review filed June 7, 1967 (I-R. 52-57), within the three-month period prescribed in Section 7483 of the Internal Revenue Code of 1954. Jurisdiction is conferred on this Court by Section 7482 of that Code.

QUESTION PRESENTED

Whether the Tax Court correctly held that funds collected by taxpayer from customers under a "Pre-Need Funeral Plan Agreement" providing that taxpayer could, at its option, use the collected funds for purposes beneficial to it, were includible in taxpayer's gross income for the taxable year in which they were received.

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, infra.

STATEMENT

The relevant facts, as stipulated by the parties (I-R. 23-27), found by the Tax Court (I-R. 30-35), and supplemented by the evidence, are as follows:

Taxpayer, Angelus Funeral Home, is a California corporation, the principal business of which was providing funeral and burial services. For the taxable year 1961 and previously, it filed its income tax returns on a calendar year, accrual basis. (I-R. 30.)

During 1961 taxpayer entered into written contracts with certain individuals which contracts were designated, and bore the heading, "Pre-Need Funeral Plan Agreement." (I-R. 30.)

In about September, 1961, the form of written agreement which was used provided in pertinent part that the applicant (customer) agreed to pay taxpayer the total sum of X dollars, said obligation to be discharged by a relatively small down payment upon the signing of the contract followed by additional payments of relatively small amounts each month thereafter until the total sum had been paid in full. Taxpayer agreed that upon proof of the applicant's death it would apply the total amount theretofore paid toward the cost of applicant's funeral according to applicant's instructions which were given at the same time the contract was signed. The contract provided further that if the applicant died at any place where it was not practicable for taxpayer to conduct his funeral service that taxpayer would transmit the total amount paid under

the contract to any reputable funeral home which was selected to conduct the funeral service. (I-R. 30-32.) The contract also provided (I-R. 63):

> 4. All amounts paid hereunder by Applicant shall be held by ANGELUS in irrevocable trust for the uses and purposes herein provided and in consideration of the services to be performed hereunder by ANGELUS, including the custody and conservation of the sums paid to it by Applicant, it is agreed that all income earned on the sums so paid shall accrue to and shall become the property of and payable to ANGELUS, as and when earned.

It further provided that the total amount paid under the contract by the applicant in any given calendar year was called the "Annual Payment" and that (I-R. 32)--

> 5. ANGELUS may, at its option (a) deposit all or any portion of the sums paid to it under this Agreement in one or more banks, trust companies or savings and loan associations, or (b) at any time before or after such deposit thereof, use all or any portion of such sums as collateral or payment for (i) the costs of any capital improvement to then existing mortuary facilities belonging to ANGELUS, and (ii) the acquisition and improvement of real property.

> 6. In consideration for its right to use the amounts paid hereunder by Applicant in the manner herein provided, ANGELUS agrees to pay to Applicant on or before the 31st day of December of each year an amount equal to ten percent (10%) of the Annual Payment (as above defined) made by Applicant during such year.1/

During and after September, 1961, some undetermined number of the applicants who had entered into a "Pre-Need Funeral Plan Agreement" with taxpayer prior to that time elected to and did sign the new form of agreement in order to be entitled to the payments of 10 percent therein provided for. (I-R. 32.)

1/ Prior to September, 1961, beginning in 1954 and continuing through August, 1961, identical provisions were used except for the following (I-R. 31):

> 4. The Parties agree that all sums paid by Applicant to ANGELUS shall be held by ANGELUS in irrevocable trust for the uses and purposes herein set forth and set forth in Funeral and Interment Instructions No.___.
>
> 5. ANGELUS agrees that it will deposit all sums paid to it under this Agreement in a bank, trust company or savings and loan association and that it will not thereafter withdraw such sums, or any portion thereof, except for the uses and purposes herein set forth; provided that ANGELUS may at its discretion withdraw such sums for the purpose of re-deposit in some other bank, trust company or savings and loan association.
>
> 6. The Parties agree that in consideration of the services performed and to be performed in the collection, custody and conservation of the sums paid to it by Applicant all interest earned on such sums shall accrue to, and shall become the property of, and payable to ANGELUS, as and when earned.

During 1961 and for some time prior thereto taxpayer maintained a general checking bank account. In addition thereto it maintained a special checking account (designated a clearing account) at Bank of America, and four savings accounts, each in a different savings and loan company, which savings accounts were designated as trustee accounts. (I-R. 32-33.)

As taxpayer collected amounts under the contracts it deposited them in the clearing account and credited a liability account on its books which was designated "Pre-Arranged Funeral Liability." Thereafter at irregular intervals most of these funds were transferred into one or more of the four trustee savings accounts. (I-R. 33.)

Taxpayer did not reflect the amounts collected on the contracts as income in the year the payments were received but returned income from the contracts only when it provided the funeral and burial services upon the death of a particular individual. It did so by debiting the "Pre-Arranged Funeral Liability" account on its books and crediting earned income. Taxpayer also reported as income the interest on the four savings accounts as such interest became due and such amounts are not in dispute. (I-R. 33.)

Commencing in 1959 and through 1961 John L. Hill, the president and the owner of all of taxpayer's stock, personally supervised the operation of taxpayer's pre-need funeral plan program and the handling of its funds. Prior to that time these responsibilites had

been handled by taxpayer's treasurer. Hill, on assuming such responsibilites, discovered that some of the pre-need funds had been deposited in taxpayer's general checking account instead of in its special clearing account or any of the trustee savings accounts. Upon making such discovery Hill ordered that such funds be immediately segregated and this was accomplished by means of a check drawn on taxpayer's general account and transferring such funds to its trustee savings accounts. (I-R. 33-34.)

As of January 1, 1959, the balances in the four savings accounts and the clearing account totaled $15,609.16, while the ending balance of taxpayer's "Pre-Arranged Funeral Liability" account at December 31, 1958, was $24,706.07. Balances of such liability account and the totals in the clearing and savings accounts were as follows (I-R. 34):

Date	Pre-Arranged Funeral Liability	Total Clearing and Savings Accounts
12/31/59	$30,936.41	$34,100.99
12/31/60	39,501.16	40,535.56
12/31/61	51,297.77	53,172.68

During each year there were certain transfers from the clearing account to taxpayer's general checking account, but during each of such years the total of such transfers was less than the total amount which taxpayer declared as income from performances under the contracts plus interest earned on the four savings accounts. (I-R. 34.)

Taxpayer was not obligated to refund any monies collected pursuant to the terms of the contracts but nevertheless it voluntarily refunded the following sums (I-R. 35):

1959	$538.09
1960	899.85
1961	742.73

Taxpayer did not include as income, in the year of receipt, amounts paid to it under the "Pre-Need Funeral Plan Agreement." (I-R. 25.) The only item of the Commissioner's statutory deficiency notice in issue on this appeal is the deficiency arising from the taxpayer's failure to report as income in the year of receipt funds received under the "Pre-Need Funeral Plan Agreement" in effect on and after September, 1961. The Tax Court, while it sustained the taxpayer with respect to the earlier contract (I-R. 36-41), determined, with respect to the later contract in effect on and after September, 1961, that receipts could at taxpayer's option be used for purposes beneficial to it, and therefore were includible in its gross income in the year of receipt (I-R. 41-44).[2/]

2/ In view of taxpayer's failure to offer any proof as to the portions of the 1961 receipts attributable to the earlier and later forms of contracts, respectively, the Tax Court applied the "Cohan rule" (Cohan v. Commissioner, 39 F. 2d 540 (C.A. 2d)) and made the best estimate it could, allocating one-half to each form of contract. (I-R. 44-45.) Taxpayer does not challenge the Tax Court's allocation.

The Commissioner has not appealed from that portion of the Tax Court's decision which is adverse to him, i.e., with respect to the Tax Court's determination that taxpayer's receipts under the terms of the earlier contract constituted trust funds not includible in its gross income in the year of receipt. (I-R. 36-41.)

SUMMARY OF ARGUMENT

It is axiomatic that taxable "net income" must be computed on an annual ("taxable year") basis, and that an item of "gross income" must be reported by a taxpayer using the "accrual" method of accounting in the taxable year in which his "right to receive" it becomes fixed, both in fact and amount. It is likewise settled, as a familiar corollary of the annual accounting rule, that a taxpayer (whether on the cash or accrual basis) who receives income under a claim of right and without restriction as to its use must report it in the year received, even though he may later be required to restore the income, or is obligated to use some or all of the income in a later year to meet related expenses. In harmony with these fundamental tax accounting principles, the Supreme Court, this Court, and other courts have held that prepayments for future services or goods, received by an accrual basis taxpayer without restriction as to their use, are reportable in the year of receipt, notwithstanding that the taxpayer is contractually obligated to perform the services or deliver the goods in a later year in consideration for the prepayments.

After analyzing the two types of funeral service contracts ("pre-need funeral plan agreement") here involved--those entered into before September, 1961, and those entered into afterward--the Tax Court concluded that prepayments under the earlier type

were received and held in trust by taxpayer for the benefit of the customer until his death and hence were not reportable in the year of receipt, but that prepayments under the later type of agreement were not so received and held and therefore were reportable in the year of receipt. The Tax Court's conclusion is fully justified by the terms of the different agreements. Taxpayer's contention that the Tax Court erred insofar as it treated the later prepayments as includible in taxpayer's gross income for the year of receipt disregards both the terms of the post-August, 1961, agreement and the controlling decisions. The later agreement, as distinguished from the earlier one, imposed no restraint upon taxpayer's right to use the prepaid funds for purposes beneficial to it (acquisition or improvement of land); on the contrary, it expressly granted to taxpayer the option to use the funds for such purposes. The mere recitation elsewhere in the agreement that the funds were to be held "in trust" must be read in conjunction with the broad option granted taxpayer to use the funds for its own benefit, and when so read it becomes clear, as the Tax Court pointed out, that taxpayer had the right to use the funds for its own benefit under the later agreement. The prepayments were immediately available for taxpayer's use, at its option, for any type of acquisition or improvement of land, and taxpayer was under no obligation to return the funds. If any doubt otherwise existed regarding taxpayer's right to use these

prepayments for its own benefit, it is dispelled by taxpayer's acknowledged right under the agreement to all income derived from the prepaid fund; indeed, taxpayer actually received and reported the interest earned.

The cases upon which taxpayer relies involved receipt and deposit of monies in trust. They apply to the funds received by taxpayer under the earlier (pre-September, 1961) agreement, as to which the Tax Court ruled in taxpayer's favor. They are inapplicable to the prepayments received under the later and different agreement involved on this appeal.

ARGUMENT

THE TAX COURT CORRECTLY HELD THAT FUNDS COLLECTED BY TAXPAYER FROM CUSTOMERS UNDER A "PRE-NEED FUNERAL PLAN AGREEMENT," PROVIDING THAT TAXPAYER COULD, AT ITS OPTION, USE THE COLLECTED FUNDS FOR PURPOSES BENEFICIAL TO IT, WERE TAXABLE INCOME TO TAXPAYER WHEN RECEIVED

A. Taxpayer had the right to use collected funds for purposes beneficial to it

Taxpayer, a funeral home, received periodic payments, under a written agreement, towards the total cost of funeral services to be performed by it at some undetermined future time.

The sole issue in this case is whether the recitation in the "pre-need funeral plan agreement" that the funds were to be held (I-R. 63) "in irrevocable trust for the uses and purposes herein

provided" served to restrict the otherwise broad authority given taxpayer to use the funds for its own beneficial purposes. Throughout its brief, despite the clear language of the "pre-need funeral plan agreement" to the contrary, taxpayer has assumed that the agreement created an "irrevocable trust" which prevented beneficial use of the funds by the taxpayer. Were it not for the trust facade, the taxability of the funds, at the time of receipt, would be unquestioned. It is our contention that the mere insertion of the statement that amounts received by taxpayer would be held "in irrevocable trust for the uses and purposes herein provided", as qualified by the specific authority granted taxpayer to use the funds, left taxpayer's right to use the funds virtually unrestricted.

Taxpayer had the absolute right not only to all income earned from the funds, but also the option, at any time, to use the funds for its own benefit. The "pre-need funeral plan agreement" provided (I-R. 63) "that all income earned on the sums so paid shall accrue to and shall become the property of and payable to ANGELUS, as and when earned."[3/] It further provided that (I-R. 63)--

> ANGELUS may, at its option (a) deposit all or any portion of the sums paid to it under this Agreement in one or more banks, trust companies or savings and loan associations, or (b) at any time before or after such deposit thereof, use all or any portion of such sums as collateral or payment for (i) the costs of any capital improvement to then existing mortuary facilities belonging to ANGELUS, and (ii) the acquisition and improvement of real property.

3/ The interest was reported by taxpayer as income, and its taxability is not in issue. (I-R. 33.)

By the plain, unambiguous language of the agreement (I-R. 63), all sums received by taxpayer under the agreement were available for use, at its option, for any type of acquisition or improvement of real property.[4/] In addition, all income received from the funds

4/ In the words of the Tax Court (I-R. 42-43):

> It seems quite clear to us that whereas the earlier form of contract created a custodial or trust arrangement, that the above-quoted language from the later form of contract effectively destroys any such possibility as to it, for this language imposes no restraint nor limitation upon petitioner's right to use the funds as they are paid in, the only limitation being upon the manner or purpose of such use. We observe further that the permitted purposes (improvement of facilities and acquisition and improvement of land) were both of sole benefit to the petitioner and of no conceivable benefit to the applicants.
>
> * * *
>
> Nor do we think the situation is altered by the circumstance that petitioner had not in fact acted under the (b) option above at any time during 1961. Petitioner had the right to do so "at any time before or after such deposit," [Emphasis supplied] and it is this right to use for its own benefit at any time which effectively prevents the arrangement from being a trust. Trust funds must be impressed with the prescribed duties and obligations when received. It is unimportant that a reserve be set up or that a trust res be later segregated by the recipient of the funds. The mere statement of such a course of action demonstrates that the recipient received such funds with no fetters upon its use of them, and then voluntarily and unilaterally chose to create the reserve or segregate the trust res. Of course, such funds were income to such a recipient when the money was received.

belonged to taxpayer when earned. Taxpayer had the unfettered right, at its discretion, to either deposit any or all funds received or use them for the acquisition and improvement of all manner of real property--all to taxpayer's benefit. No aspect of complete ownership was lacking. Only in the remote possibility that the applicant died in an area "not practicable" for taxpayer to conduct funeral services did an obligation to return the funds exist.[5] The funds received were not returnable without taxpayer's consent.

B. Income must be reported in the year received

Taxpayer reported its income on the accrual basis. (I-R. 30.) The principles governing the accrual and reporting of income by taxpayers, such as Angelus, who employ the accrual basis have long been settled.[6] It is the right to receive and not the actual receipt that determines the inclusion of the amount in gross income. An item of gross income must be reported by taxpayer using the accrual method of accounting in the taxable year in which his right to receive it becomes fixed, both in law and fact. Spring City Co. v. Commissioner, 292 U.S. 182, 184; Security Mills Co. v. Commissioner, 321 U.S. 281, 286-287; Commissioner v. Hansen, 360 U.S. 446, 464.

5/ Even in this situation, nothing would preclude taxpayer from employing another funeral home to conduct the services.

6/ The pertinent statutory provisions (1954 Code Sections 61(a), 441, 446, 451) are set forth in the Appendix, infra.

Here, however, this settled rule of law need not even be relied on as in fact the amounts involved were actually received and, accordingly, must be included in gross income in the year of receipt. Each "taxable year" must be treated as a separate unit, and all items of gross income must be reflected in terms of their posture at the close of such year. Burnet v. Sanford & Brooks Co., 282 U.S. 359, 363, 365; Heiner v. Mellon, 304 U.S. 271, 276; Guaranty Trust Co. v. Commissioner, 303 U.S. 493, 498; Security Mills Co. v. Commissioner, supra, p. 286; United States v. Consolidated Edison Co., 366 U.S. 380, 384. It is likewise well settled that a taxpayer, whether on the cash or accrual basis, who receives income under a claim of right and without restriction as to its use must report it in the year received even though he may later be required to restore the income. North American Oil v. Burnet, 286 U.S. 417, 424; United States v. Lewis, 340 U.S. 590, 591; Healy v. Commissioner, 345 U.S. 278, 281; Crellin's Estate v. Commissioner, 203 F. 2d 812 (C.A. 9th), certiorari denied, 346 U.S. 873; United States v. Merrill, 211 F. 2d 297, 303 (C.A. 9th); see also, 1954 Code Section 1341 (26 U.S.C. 1964 ed., Sec. 1341). Income must be reported in the year received even if the taxpayer is obligated to use some or all of the income in a later year to meet related expenses. American Automobile Assn. v. United States, 367 U.S. 687; Schlude v. Commissioner, 372 U.S. 128.

Admittedly, receipts by a trustee expressly and solely for the benefit of another are not income to the trustee in his individual capacity. Healy v. Commissioner, supra, p. 282. A prepayment for future services which the taxpayer-payee is prohibited from using as its own, but must hold in trust until the services are performed, is not reportable until the restriction on its use disappears, i.e., until the services are performed and the trust is thereby terminated. Seven-Up Co. v. Commissioner, 14 T.C. 965; Broadcast Measurement Bureau, Inc. v. Commissioner, 16 T.C. 988. As an obvious corollary, a prepayment for future services which the taxpayer-payee is specifically authorized to use as its own, as in this case, even though purportedly held in trust until the services are performed, is reportable when received. The trust facade in this agreement, as previously discussed, was meaningless. In determining the validity of a fund as a trust, printed words or labels are not determinative. National Memorial Park v. Commissioner, 145 F. 2d 1008, 1012 (C.A. 4th), certiorari denied, 324 U.S. 858. Even if, however, the effectivness of the trust is assumed, the critical factor here is that the funds were nevertheless available to promote capital improvements and acquisitions by taxpayer, thus constituting income when received. Gracelawn Memorial Park v. United States, 260 F. 2d 328, 332 (C.A. 3d).

In Portland Cremation Ass'n. v. Commissioner, 31 F. 2d 843, this Court recognized that an essential attribute for the exclusion of funds received in "trust" from gross income is that such funds not be subject to diversion for corporate purposes or any other purposes (p. 846). In Portland taxpayer agreed to maintain certain niches, urns and vaults forever. All sales were made with the representation that a permanent maintenance fund would be established and that the fund could not and would not be used for any other purpose. Such amounts were held to be excludible from gross income. Unlike Portland, the agreement in this case specifically authorized taxpayer to use the funds for its corporate purposes.

More recently, in Mutual Tel. Co. v. United States, 204 F. 2d 160, this Court again recognized that if a taxpayer is free to use funds in its possession, at its option, such funds are includible in its gross income. In that case, funds were originally received by the telephone company without any right of use for its benefit. This Court held that such funds were not income to it at that time. Subsequently, under an order of the supervisory Public Utilities Commission, the telephone company was given permission to use the funds for a restricted and specified purpose of benefit to it. Permission to use the funds by depositing them to the "Retirement System" of the telephone company was held by this Court to make the funds taxable income to the telephone company at that time. In its

opinion below, the Tax Court correctly followed Mutual in reaching its decision. (I-R. 44.) The creation of a trust, into which funds received are placed, is not in and of itself sufficient to prevent the trust money from being treated as income. The vital factor is the terms and provisions of the particular trust involved. The questions of control by, and inurement to the benefit of, the taxpayer are of prime importance. Where trust funds are available, under the terms of the trust, to promote future capital improvements in the taxpayer's property, or, even more directly, the acquisition and improvement, without limitation of any real property at taxpayer's discretion, such funds are clearly available for taxpayer's benefit and, accordingly, includible in its gross income. Jefferson Memorial Gardens, Inc. v. Commissioner, 390 F. 2d 161, 166 (C.A. 5th); Metairie Cemetery Assn. v. United States, 282 F. 2d 225, 230 (C.A. 5th); National Memorial Park v. Commissioner, supra; Gracelawn Memorial Park v. United States, supra; Mount Vernon Gardens, Inc. v. Commissioner, 298 F. 2d 712, 716 (C.A. 6th). As was so aptly pointed out by the court in National Memorial Park v. Commissioner, supra. p. 1014, should the taxpayer prevail here, the door would be open for the establishment of all manner of "trust" funds with very elastic provisions allowing an increase in economic benefit without tax liability. Such a situation is altogether

inconsistent with the idea of an equitable, proportionate tax burden.

C. Funds received were neither on loan nor on deposit

Taxpayer in its brief now contends, belatedly and without basis in fact, as an alternative to its trust contention, that the monies received "are to be treated as analogous to loans, and therefore as not constituting income, even though the holding does not even purport to be a holding in trust." (Br. 23.) The inapplicability of this contention is patent. No obligation to repay existed. Here, taxpayer's broad, specific authority to use and retain the funds received distinguish the situation from cases cited by taxpayer in which funds received were determined to be deposits or loans. Cases such as Clinton Hotel Realty Corp. v. Commissioner, 128 F. 2d 968 (C.A. 5th), cited by taxpayer, involve funds with all of the characteristics of security. Only upon the occurrence of a specific, unexpected term or condition would the deposit be available for credit, at the end of the term, to taxpayer's account. Consolidated-Hammer Dry Plate & Film Co. v. Commissioner, 317 F. 2d 829 (C.A. 7th), involved income from sales of property under the unique provisions of Government procurement regulations. Partial payments made by the Government on a contract were reportable as accrued income only when delivery and acceptance of the product was made. Other cases cited involve findings of

fact made by a trial court involving particular facts supporting the existence of a loan or deposit. No facts to support such a finding in this case exist. The Tax Court property did not make such a finding nor does the taxpayer assert error in the Tax Court's failure to do so.

Examination of the "pre-need funeral plan agreement" (I-R. 63) reveals that it is a contract for funeral services. Only if "the full amount of the Total Funeral Cost has been paid," does taxpayer have the obligation to supply a casket. The partial payments in issue, accordingly, are payments purely for services. No obligation to supply a casket exists until the full contract price is paid. Taxpayer alleges (Br. 28) that since the cost of the casket is indeterminable it is "particularly inappropriate to attempt to treat such deposit payments as presently-taxable income to the seller."

Nothing in the Treasury Regulations or decisions require the matching of a particular purchase with a particular item in inventory. See Schlude v. Commissioner, supra; American Automobile Assn. v. United States, supra. Even if it be concluded that the advance payments were, partially, for goods to be delivered in the future -- which we contend clearly they are not until the contract price is fully paid -- this factor does not alter the requirement that income must be reported in the year received. See Farrara v. Commissioner, 44 T.C. 189; Hagen Advertising Displays, Inc. v. Commissioner, 47 T.C. 139 (pending appeal, C.A. 6th).

In summary, the basic issue is whether the inclusion in the agreement of the words "irrevocable trust" served to divest taxpayer of his undisputed claim of right to, and use of, the funds received. So far as taxpayer's dominion and control of the funds are concerned -- the crucial consideration -- it is clear that in all essential aspects taxpayer's use and control of the funds were no different than if the words "irrevocable trust" had been omitted from the agreement. The funds constituted an item of gross income when received.

CONCLUSION

The decision of the Tax Court is correct and should be affirmed.

Respectfully submitted,

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MAY, 1968.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: _____ day of May, 1968.

_____

BENNET N. HOLLANDER
Attorney

APPENDIX

Internal Revenue Code of 1954:

SEC. 61. GROSS INCOME DEFINED.

(a) General Definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;

* * *

(26 U.S.C. 1964 ed., Sec. 61.)

SEC. 441. PERIOD FOR COMPUTATION OF TAXABLE INCOME.

(a) Computation of Taxable Income.--Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable Year.--For purposes of this subtitle, the term "taxable year" means--

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies; or

(3) the period for which the return is made, if a return is made for a period of less than 12 months.

(c) Annual Accounting Period.--For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar Year.--For purposes of this subtitle, the term "calendar year" means a period of 12 months ending on December 31.

* * *

(26 U.S.C. 1964 ed., Sec. 441.)

SEC. 446. GENERAL RULE FOR METHODS OF ACCOUNTING.

(a) General Rule.--Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions.--If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary or his delegate, does clearly reflect income.

(c) Permissible Methods.--Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting--

(1) the cash receipts and disbursements method;
(2) an accrual method;
(3) any other method permitted by this chapter; or
(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary or his delegate.

* * *

(26 U.S.C. 1964 ed., Sec. 446.)

SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) General Rule.--The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

* * *

(26 U.S.C. 1964 ed., Sec. 451.)